Office-Supreme Court, U.S.
FILED
JUN 25 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS, DIVISION 1 AND APPENDIX

(For Attorneys, See Inside Front Cover)

ATTORNEYS

ROBERT REESE,
Corporation Counsel,
JULIUS C. PLISKOW,
ARTHUR YIM,
Assistants Corporation Counsel,
1010 City-County Building,
Detroit, Michigan, 48226,
965-4200, Ext. 584,
Attorneys for Petitioners-Plaintiffs.

TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2-3
Questions Presented for Review	3-4
Constitutional Provision Involved, etc.	4
Statement of the Case	4-6
What This Case Does Not Involve	6-7
Reasons for Granting the Writ	7-11
Conclusion	12-13
Appendix A—Opinion of Michigan Court of Appeals	15-18
Appendix B—Orders of Michigan State Tax Commission	19-25
Appendix C—Statutes, Charter Provisions	26-28

AUTHORITIES CITED

Brown v. Maryland, 12 Wheat (U.S.) 419	8, 9-10
Hooven and Allison v. Evatt, 324 U.S. 652	5, 8, 9
Low v. Austin, 13 Wall. (U.S.) 29	8
Pervear v. Commonwealth of Massachusetts, 72 U.S. 608	8, 10
Waring v. Mayor of Mobile, 75 U.S. 342	8, 10
Youngstown Sheet and Tube Co. v. Bowers, 358 U.S. 534, 3 L.Ed. 2d 490	10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. .....

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS, DIVISION 1 AND APPENDIX

To: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners-Plaintiffs pray that a writ of certiorari issue to review the judgment of the Michigan Court of Appeals, Division I, entered in the above-entitled consolidated cases on December 2, 1968.

A. OPINIONS BELOW

The opinion of the Michigan Court of Appeals, Appendix A, an appellate court of said State appears in 165 N.W. 2d 875 (1968). The earlier opinion of Michigan State Tax Commission dated February 1, 1967, is unreported and is printed in Appendix B attached hereto. Denial of application for timely leave to appeal to Michigan Supreme Court was issued March 20, 1969, as indicated in 165 N.W. 2d 875 (1968).

B. JURISDICTION

(1) Involved herein are appeals from the Court of Appeals which vacated certain assessments placed on Detroit's 1966 personal property rolls by the Michigan State Tax Commission against taxpayers alleging that they were importers of foreign steel held in original packages for resale and claiming to be entitled to immunity from taxation thereof by virtue of Article I, Sec. 10, Cl. 2 of Constitution of United States. Upon denial of their contentions, 11 respective respondents took appeals to Michigan Court of Appeals. Their cases were consolidated, arguments heard on the same day and disposed of by one opinion which reversed the determinations of the Michigan State Tax Commission on December 2, 1968.

A timely application for leave to appeal filed with Michigan Supreme Court by petitioners was denied March 20, 1969.

(2) Jurisdiction of this Court to issue writ of certiorari is invoked under C. 646, 62 Stat. 929 (28 U.S.C.A. 1257(3)). The constitutional immunity issue raised being applicable to all, this petition is intended to apply to the several cases consolidated below in conformance with Rule 23 (5).

C. QUESTIONS PRESENTED FOR REVIEW

The following questions are presented for review:

Under its finding of facts that respondents (steel wholesalers) contracted for purchase of steel with domestic based companies acting as principals and not as agents, was a grant of immunity by the Michigan Court of Appeals from local *ad valorem* non-discriminatory personal property taxes inconsistent with decisions of this Court construing the Import-Export clause of the United States Constitution (Article I, Sec. 10, Cl. 2)?

Under its finding of facts that the domestic companies entered into separate and distinct contracts with the foreign sellers of such steel and not as agents or for their account, did the Court of Appeals err in its ruling that respondents were entitled to immunity on the rationale of Hooven and Allison?

Under the acknowledged facts that respondents purchased such steel from domestic companies for resale and not to obtain material to be manufactured by them, did the Michigan Court of Appeals unduly extend the role of im-

porter in the constitutional sense both to these respondents and to said domestic companies directly and proximately causing importation?

The Court of Appeals said "No" to all three questions.

D. CONSTITUTIONAL PROVISION INVOLVED, ETC.

The provision in Article I, Sec. 10, Cl. 2 of the United States Constitution reads as follows:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

Statutory provisions applicable to assessments which provide a basis for the personal property taxes herein are referred to below. Being too lengthy to set forth in full, the pertinent text appears in Appendix C attached hereto.

E. STATEMENT OF THE CASE

Consolidatd here for review are eleven matters heard separately on petitions by petitioners-plaintiffs to Michigan State Tax Commission in 1966. These requested that increased assessments be placed on Detroit's 1966 personal property rolls against each of said respondents as said Tax Commission was statutorily empowered to do. The issue, common to all cases, was assessability of inventories of

foreign steel of the respective respondents. They contended that they were importers and claimed immunity of their inventories of such steel held in the original package for resale both at the administrative level and before the State courts by virtue of Article I, Sec. 10, Cl. 2 of Constitution of the United States.

The Tax Commission concluded that the burden of proof rested on respondents and they had failed to prove said claims of immunity because of doubts that these were imports based on documents and exhibits in evidence and because there is a presumption that property is taxable unless it clearly appears that immunity is granted by constitutional provisions or statutes. (App. B, p. 21)

Increases of assessments resulting from determinations of Tax Commission totalled in the aggregate $2,244,990.

Personal property assessments under Michigan law are *ad valorem* in nature. Taxes levied against respondents based on said assessments were non-discriminatory, i.e., the procedures to value these inventories of steel of foreign origin and the rates of taxation were the same as in the case of inventories of any tangible personal property of domestic origin in Detroit in 1966. (App. C)

After obtaining leave to appeal from their increased assessments respondents' cases were consolidated, heard and disposed of as one by Michigan Court of Appeals Division I, consisting of T. G. Kavanagh, P.J., Burns and Fitzgerald, J.J. A single opinion was issued by which the several determinations of the Tax Commission were reversed on December 2, 1968, 165 N.W. 2d 875. Respondents were found entitled to immunity from taxation. The Court's opinion concluded that their transactions in these cases fell within the scope of the decision in *Hooven and Allison v. Evatt* (1945), 324 U.S. 652.

Timely application to appeal to the Michigan Supreme Court was taken by petitioners for the purpose of exhausting their state remedies. An order denying leave was issued March 20, 1969, which left standing the decision below.

The respective records and transcripts of hearings having been returned to the Michigan Court of Appeals, request has been made to the Clerk of the latter for certification of same to this Court.

(a) Federal Questions Raised Below

The constitutional immunity questions based on Article I, Sec. 10, Cl. 2 of the Constitution of the United States were timely and properly raised at the following stages:

Before the State Tax Commission (App. B). (See paragraph numbered 2 of findings of the Commission.)

Before Michigan Court of Appeals (165 N.W. 2d 875, at p. 876) (App. A).

Said constitutional immunity was denied by the Tax Commission and later sustained by Michigan Court of Appeals when its decision reversed the several orders of the Tax Commission.

F. WHAT THIS CASE DOES NOT INVOLVE

The facts presented in these appeals are distinguished in that the assessments do not involve steel brought into the United States

(1) by purchase directly by respondents from a foreign producer or supplier;

(2) by purchase by respondents through a domestic broker acting as agent for or for the account of a designated foreign producer or supplier; nor

(3) for the purpose of supplying any of these respondents with raw material to be manufactured into a finished product in its own plant.

G. REASONS FOR GRANTING THE WRIT

(a) Pending Litigation

The issues involved in the eleven cases presented for review with respect to 1966 personal property taxes are also involved in approximately fifty actions subsequently filed in the Wayne County Circuit Court for the years 1967 and 1968. The amounts of taxes now being challenged annually are in greater amounts due to the ever increasing volume of foreign goods arriving in ports on the Great Lakes from overseas and claimed immune under the import-export clause.

The determinations of Tax Commission increased assessments for 1966 against the several respondents from $3,065,810 to $5,310,800. The combined increases totalled $2,244,990.

In the aggregate, additional local taxes for 1966 based on said increases amounted to $53,817.14 for the City of Detroit, $42,825.62 for the Detroit Board of Education, and $19,901.93 for Wayne County.

Early consideration by this Court of the assessability of this steel purchased from a domestic based company and held in inventory for resale by each respondent is urgently required and would of course dispose of much of this litigation. More importantly, it would further insure application of uniform tax procedures to foreign goods which had been so acted upon by the actual importer as to have entered the channels of trade and accordingly lost any right to immunity.

(b) Failure to Apply Constitutional Principles to Facts Herein

The error of the Court of Appeals in striking down increased assessments against respondents consisted chiefly of failure to apply constitutional principles established by this Court (*Brown v. Maryland* (1827), 12 Wheat (U.S.) 419, 441, 6 L.Ed. 678, 686; *Low v. Austin* (1872), 13 Wall. (U.S.) 29, 20 L.Ed. 519; *Pervear v. Commonwealth of Massachusetts* (1867), 72 U.S. 608, 5 Wall. 475; *Waring v. Mayor of Mobile* (1869), 75 U.S. 342, 8 Wall. 110) to the acknowledged facts of these cases.

The opinion of the Court below noted factual similarities between *Hooven and Allison v. Evatt,* (1945) 324 U.S. 652, 65 S. Ct. 870, 89 L.Ed. 1252, and these consolidated steel cases. However, it also found basic differences (p. 877 of 165 N.W. 2d) (App. A, p. 18):

> "In the present cases the defendants (local steel wholesalers) contracted with companies (in the United States) which (as shown by documents in evidence) extended their own credit and received all payments for their own accounts. The precise relationship between the domestic companies and the foreign mills (or brokers in some cases) does not clearly appear on the records, but it can be discerned that the domestic concerns entered into separate and distinct contracts with the foreign sellers." (Material in parentheses added.)

These facts clearly showed respondents as purchasers and not the first vendors of the foreign steel. It was accordingly as taxable as other property (*Waring v. Mayor of Mobile, supra,* at p. 346 of 75 U.S.).

Respondents' transactions did not obligate a foreign producer to sell to them on credit, to ship goods to an American port, and deliver same in consideration of their obligation to accept and pay said foreign source therefor (*Hooven and Allison v. Evatt, supra,* at p. 661 of 324 U.S.).

Respondents' transactions were entered into with parties designated as "sellers" and not executed as agent for or "for account of" a named principal overseas (*Ibid* at p. 659).

Respondents did not acquire the steel to supply their needs of raw material for manufacture of any product (*Ibid* at p. 661).

(c) Constitutional Safeguards Overlooked by Court Below

Error of the Court of Appeals consisted of extending the doctrine of constitutional immunity of imports from local taxation beyond established limits established by decisions of this Court.

The holding in favor of respondents overlooks the first question proposed in *Hooven and Allison, supra,* at p. 658 of 324 U.S. which was to consider whether petitioner, Hooven and Allison, was the importer. The majority opinion concluded that the latter was the importer under those facts, at p. 661.

Extension of immunity to respondents results in characterizing as importers both respondents and the domestic companies with whom they contracted. Since respondents have not claimed to be using the steel themselves but are engaged in the business of selling same, what is to prevent any subsequent purchaser or the ultimate retailer from claiming immunity so long as such steel remains in the original form or package?

It is illogical to characterize more than one of the parties to the contract as the importer in the constitutional sense. It is also contrary to the decisions of this Court commencing with the carefully worded ground rules of *Brown v.*

Maryland, supra, at 441-442 of 12 Wheat (U.S.). While immunity of imports was adequately protected in the hands of an importer, it was clearly intended that power of the States to tax be nevertheless safeguarded. *Waring v. Mayor of Mobile, supra,* citing with approval at p. 346 of 75 U.S. the case of *Pervear v. Commonwealth,* 72 U.S. 608, 609, 5 Wall. 475.

(d) Restatement Urged of Import-Export Immunity Doctrine

The mere finding that respondents have on hand foreign steel in the original package, which they contracted to purchase from domestic-based companies, is not just cause for nullifying local taxation as the Court of Appeals did herein on purported authority of *Hooven and Allison v. Evatt, supra.*

We urge upon the Court the desirability, perhaps the necessity, of distinguishing its decision in *Hooven and Allison* from applicability to the facts here presented. Opportunity should be given to furnish this Court the full facts and arguments in briefs and in open hearing. Absent some guiding definition, it will leave the phrase "efficient cause of importation" which this Court applied to the facts in *Hooven and Allison, supra,* controlling the transactions herein which have been distinguished by the findings of the court below. To equate "the efficient cause of importation" with the "importer" under these circumstances will permit much foreign goods, even though domesticated, to be placed beyond the taxing jurisdiction of the states and their local taxing units.

On a previous occasion, this Court recognized that it had different facts before it and distinguished *Hooven and Allison.* In *Youngstown Sheet and Tube Co. v. Bowers* (1959), 358 U.S. 534, 3 L.Ed. 2d 490, the following appeared at top of 544 of 358 U.S.:

> "But the record there did not present, and this Court did not reach or decide the question we have here. Indeed the Court expressly reserved it."

It is respectfully suggested that uniform administration of assessment procedures with respect to foreign goods brought into Michigan as well as other States depends on clarification of the term "importer" by this Court. Otherwise field auditors, being legally untrained in reading correspondence initiating or documents confirming agreements of sale of goods, will be hard pressed to determine what personal property of foreign origin is to be included in an assessment or excluded when held by one claiming to be an importer.

Documents which may indicate that respondents have purchased goods directly from an overseas source or from a domestic-based firm acting as agent for a named principal create no problem. Their rights as importers under the Constitution are readily recognized. However, a claim of immunity based on "efficient cause of importation" requires an auditor to accept a contention which is generally unsupported by and in the present instances is contradicted by documents available for examination.

By granting opportunity for hearing of these appeals, the entire subject of constitutional immunity under the Import-Export clause can be clarified and rendered possible for future consistent use by this and inferior courts.

CONCLUSION

There can be no question that the constitutional immunity of imports from taxation by the states and their municipalities must be protected. But such protection should not proceed beyond any perceivable necessity to benefit a privileged class of taxpayers at the expense of the power of the states and their municipalities to impose taxes for their own support. The importer, that person or entity which directly causes the bringing of foreign goods into this country, is to be shielded from taxation of the foreign goods while the property is in his hands. But these foreign-produced goods should not be placed beyond the state's taxing jurisdiction after their transfer by this importing entity to domestic wholesalers. Having been acted upon by the importer, these foreign goods were domesticated and became a part of the general mass of property within the State, subject to the same benefits and burdens as all other property.

A proper balance between the interests of the nation warranting the protection of the channels of importation and the interests of the states and their municipalities in equitable and uniform taxation for their own support should, it is prayed, be re-established by a decision herein upon the merits.

Wherefore, petitioners request that this petition for a writ of certiorari should be granted.

Respectfully submitted,

City of Detroit, a municipal corporation, and Board of Assessors of the City of Detroit, Petitioners-Plaintiffs
ROBERT REESE
Corporation Counsel
JULIUS C. PLISKOW
ARTHUR YIM
Assistants Corporation Counsel

By: JULIUS C. PLISKOW
1010 City-County Building
Detroit, Michigan 48226
965-4200, Ext. 584

Dated: June 13, 1969.

APPENDIX A

OPINION OF MICHIGAN COURT OF APPEALS DECEMBER 2, 1968

STATE OF MICHIGAN
COURT OF APPEALS
DIVISION I

City of Detroit, a municipal corporation, Board of Assessors of the City of Detroit,
Plaintiffs-Appellees,
Michigan State Tax Commission,
Appellee,
v.
Kenwal Products Corporation, a Michigan Corporation,
Defendant-Appellant, et al.

No. 3,323

Before: T. G. Kavanagh, P.J., Burns and Fitzgerald, J.J.

Burns, J.

Eleven Detroit steel warehousing companies appeal by leave from tax commission decisions which ordered the value of certain steel to be placed on the city of Detroit personal property assessment rolls. The steel in question was shipped from foreign ports to Detroit where after clearing customs it was delivered to appellants' warehouses and stored for resale. Appellants claim that the steel was immune from property taxes because of US Const, art 1, §10, cl. 2, and cases which have interpreted that provision.

In *Brown v. Maryland* (1827), 25 US 419 (6 L ed 678), the Supreme Court invalidated a state licensing tax and

held that a state could not tax imports as long as the property remained in its original form or package. *Low v. Austin* (1872), 80 US 29 (20 L ed 517), expanded the principles of *Brown v. Maryland* to prohibit states from levying *ad valorem* taxes on goods which have not lost their character as imports. See also *City of Detroit v. Lake Superior Paper Company* (1918), 202 Mich 22. Susequent to *Brown v. Maryland, supra*, it has become well-established that imports lose their constitutional immunity when the importer (1) sells them or (2) "breaks up the packages" or (3) puts them to the use for which they were imported. *Youngstown Sheet & Tube Company v. Bowers* (1939), 358 US 534 (79 S Ct 383, 3 L ed 2d 490).

At the time of assessment in the present cases it appears that the imported steel was in its original package and that it was not being put to any use for which it was imported. The city of Detroit contends, and the tax commission so held, that domestic based companies imported the steel and sold it to appellants, thereby making the steel lose its character as an import. Appellants argue that they are the importers.

The United States Supreme Court spoke to the issue of who is an importer in *Hooven & Allison Company v. Evatt* (1945), 324 US 652, 663, 664 (65 S Ct 870, 89 L ed 1252):

> "When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected. It is common knowledge to lawyers and businessmen that vast quantities of merchandise are annually imported into this country by purchasers resident here, for sale or manufacture here.

> Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes, as in this case, the purchase is on unsecured credit, but more often it is under contracts by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in the one case than in the others, is to ignore the constitutional purpose and substitute form for substance. * * *
>
> "It is enough for present purposes that the merchandise in this case was imported; and that petitioner was the efficient cause of its importation, the purpose and effect of which was petitioner's acquisition of the merchandise for its manufacture into finished goods. We conclude that petitioner was the importer, and that the merchandise in its hands was entitled to the constitutional tax immunity, surviving delivery of the imports to it."

There are many factual similarities between the *Hooven Case, supra,* and these consolidated steel cases. In both instances the taxpayer placed orders with domestic corporate intermediaries for merchandise which originated in a foreign country. The price included charges for ocean freight, insurance, and customs. The goods were specifically marked when they left the foreign port to identify the product for the taxpayer, except in a few instances when the sales took place while the steel was en route. In *Hooven* the contract for sale between the domestic seaboard company and the Ohio manufacturer read, "for the account of" the foreign producer. Payment went directly from the Ohio manufacturer to the foreign producer and credit was extended by the foreign company.

In the present cases the appellants contracted with companies which extended their own credit and received all payments for their own accounts. The precise relationship between the domestic companies and the foreign mills (or brokers in some cases) does not clearly appear on the records, but it can be discerned that the domestic concerns entered into separate and distinct contracts with the foreign sellers.

There are two transactions involved in the *Kenwal Case* that differ from the other transactions in these consolidated cases. Kenwal entered into a joint venture with M. W. Zack Metal Company and the Donovan Wire & Iron Company. Zack and Donovan each ordered an entire shipload of steel through intermediaries, with the agreement that Kenwal would participate by taking half of each shipload. For convenience, all of the documents were made in the names of Zack and Donovan. We see no reason to treat these transactions any differently than the other sales involved in these consolidated cases.

In determining who is the "efficient cause" of importation in the constitutional sense, we must look beyond matters of form to the substance of the transaction. Perhaps the most significant substantive matter which the Supreme Court emphasized in *Hooven, supra,* 661, was the fact that performance of the contract called for, and necessarily resulted in, importation of the merchandise. Appellants' contracts with the domestic intermediaries specified that the steel was to be shipped from a foreign country or was already en route directly to the appellants. Performance of these contracts then, as in *Hooven,* called for, and necessarily resulted in, importation. In our opinion the transactions in these cases fall within the scope of the Hooven decision.

The orders of the tax commission are vacated.

APPENDIX B

ORDERS OF MICHIGAN STATE TAX COMMISSION

(Two orders applicable to the assessments placed against Ambassador Steel Company are set forth which orders are typical of those issued in the case of each of respondents herein for 1966, with exception of several against whom only a single order was issued.)

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 22-5610 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 20, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Ambassador Steel Company, 12211 Coyle Street, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C.L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-5610 asks the current assessment of $289,380 to be raised to $530,050 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports. . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value; or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $1,060,100 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $479,700. Since the proposed assessment per Petition No. 22-5610 is $530,050 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are

best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C.L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $479,700 be placed upon the assessment roll as the true and lawful value of such property.

February 2, 1967

Robert L. Purnell, Chairman

R. Gerald Barr, Commissioner

Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

/s/ Edward W. Kane
Secretary

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 22-5611 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 20, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, to be assessed to Ambassador Steel Company, 12211 Coyle Street, Detroit.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-5611 asks the current assessment of $415,730 to be lowered to $414,610 because of information revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer on a title retaining sales contract from an importer whereby the material has been committed to the exclusive use of the taxpayer as long as he adheres the terms of the contract and thereby the material has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that the title has never passed to them from the importers and as such the steel in question retains

its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports. . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C.L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true

cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $829,220 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $375,200. Since the proposed assessment per Petition No. 22-5611 is $414,610 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $375,200 be placed upon the assessment roll as the true and lawful value of such property.

February 2, 1967.

Robert L. Purnell, Chairman

R. Gerald Barr, Commissioner

Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

/s/ Edward W. Kane
Secretary

APPENDIX C

Compiled Laws of Michigan 1948, 211.1

"Sec. 1. That all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."

Compiled Laws of Michigan 1948, 211.2

"Sec. 2. * * *

Tax day, preparation of assessment roll, examination of properties by assessors. The taxable status of persons and real and personal property shall be determined as of each December 31, which shall be deemed the tax day for the immediately succeeding calendar year, which is also the tax year, any provisions in the charter of any city or village to the contrary notwithstanding. No assessing officer shall be restricted to any particular period in the preparation of the assessment roll but may survey, examine or review properties at any time prior to or after the tax day."

* * * * *

Compiled Laws of Michigan 1948, 211.8

"Sec. 8. For the purposes of taxation, personal property shall include:

1. All royalties;

2. All goods, chattels and effects within the state;

* * * * *

8. All other personal property not herein enumerated, and not especially exempted by law;"

* * * * *

Section 1, Chapter II, Title VI, Charter of the City of Detroit, 1918 (1963 Ed.)

"All real and personal property within the city subject to taxation by the laws of this state shall be assessed at its true cash value by the board of assessors herein provided. Assessments shall be made according to assessment districts, the boundary lines of which shall conform to ward boundaries as established from time to time by the common council. There shall be an assessment roll in book form for each such district. All taxes upon personal property may be assessed in any district, whether the person assessed is a resident of such district or not."

Section 2, Chapter II, Title VI, Charter of the City of Detroit, 1918 (1963 Ed.)

"In all assessments, the lands, tenements and subdivisions assessed shall be described by referring to the number and section of the lot and the name of the owner or occupant thereof, and if the number and section of any lot, or the name of the owner thereof can not be ascertained, then by such other sufficient description as the board of assessors may deem proper. If, by mistake or otherwise, any person may be improperly designated as the owner of any lot, tenement, or premises, such assessment or tax shall not for that cause be vitiated, but the same shall be a lien on such lot, tenement or premises, and collected as in other cases. If any lot or lots shall lie partly in two or more districts, the same shall be assessed in the district where the greater portion of said lot or lots is situated."

Section 7, Chapter II, Title VI, Charter of the City of Detroit, 1918 (1963 Ed.)

"Sec. 7. After the assessment rolls shall have been fully and finally confirmed, it shall, as herein provided, be the duty of the board of assessors to cause the amount of all taxes, in dollars and cents, authorized to be assessed and collected in each year, to be ratably assessed to each person named or lots described, upon and according to the aggregate valuation which such person or lots shall have been assessed in said assessment rolls. Such ratable assessments shall be entered in a book prepared for that purpose to be known as the tax roll for each district, in a column showing the amount of city taxes assessed to each person or lot in each year. Such tax rolls shall contain columns for the names and addresses of all persons assessed hereunder. When said tax rolls shall have been completed, the board shall deliver the same to the controller, who shall cause the same to be delivered to the city treasurer on the first day of July, take his receipt therefor and charge him therewith. All city taxes shall become a debt against the owner from the time of the listing of property for assessment by the board of assessors."

Section 1, Chapter IV, Title VI, Charter of the City of Detroit, 1918 (1963 Ed.)

"All city taxes shall be due and payable on the fifteenth day of July in each year, and on that date shall become a lien on the property taxed. The owners or occupants or parties in interest to any real estate assessed hereunder shall be liable to pay such taxes, and all assessments levied in accordance herewith. The owners or persons in possession of any personal property shall pay all taxes assessed thereon."